

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name BROWN TIMOTHY W.
 (Last) (First) (Initial)

Filed

Prisoner Number APK-134

MAY 29 2007

Institutional Address 885 N. SAN PEDRO ST
SAN JOSE, CA - 95110

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

TIMOTHY William BROWN
 (Enter the full name of plaintiff in this action.)

vs.

EDWARD C. FLORES

(Enter the full name of respondent(s) or jailor in this action)

Case No. 07 02793 JW
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

3. Did you have any of the following?

Arraignment: Yes 0 No

Preliminary Hearing: Yes 0 No

Motion to Suppress: Yes No 0

4. How did you plead?

Guilty Not Guilty 0 Nolo Contendere

Any other plea (specify) — NONE —

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone Judge alone on a transcript

6. Did you testify at your trial? Yes No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes X No

(d) Trial Yes X No

(e) Sentencing Yes X No

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes No X

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: 1997 Result: DENIED

Supreme Court of California Yes X No

Year: 99'-00' Result: DENIED

Any other court Yes X No

Year: 2004 Result: DENIED

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes _____

No X

(c) Was there an opinion?

Yes _____

No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes _____

No X

If you did, give the name of the court and the result:

N/A

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes X No _____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: NORTHERN DISTRICT COURTType of Proceeding: HABEAS CORPUS

Grounds raised (Be brief but specific):

a. DENIAL OF SELF-REPRESENTATIONb. CRUEL AND UNUSUAL PUNISHMENTc. ILLEGAL STRIKE ENHANCEMENT

d. _____

Result: DENIED Date of Result: 2004II. Name of Court: NINTH CIRCUITType of Proceeding: HABEAS ??

Grounds raised (Be brief but specific):

1 a. _____
 2 b. _____
 3 c. _____
 4 d. _____
 5 Result: _____ Date of Result: _____

6 III. Name of Court: _____
 7 Type of Proceeding: _____
 8 Grounds raised (Be brief but specific):
 9 a. _____
 10 b. _____
 11 c. _____
 12 d. _____
 13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____
 15 Type of Proceeding: _____
 16 Grounds raised (Be brief but specific):
 17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____
 21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No X

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: PETITIONER IS ENTITLED TO RELIEF, UNDER

6 THE UNITED STATES SUPREME COURT'S HOLDING IN 'CUNNINGHAM V. CALIFORNIA' (2007) 75 U.S.-L.W. 4078-

7 Supporting Facts: PETITIONER'S HABEAS PETITION WAS STILL
8 PENDING DURING THE 'BLAKELY V. WASHINGTON' (2004)

9 542 U.S. 296, WHICH MAKES PETITIONER ELIGIBLE FOR
10 RESENTENCING UNDER CUNNINGHAM. THE STATE

11 COURTS IS IN ERROR BY DENYING
12 PETITIONER'S PETITION FOR HABEAS RELIEF.

13 Supporting Facts: _____

14 _____
15 _____
16 _____
17 Claim Three: _____

18 _____
19 Supporting Facts: _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 N/A
26 _____
27 _____
28 _____

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No X

8 If you do, give the name and address of your attorney:

9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

5-17-07

14 Date

Timothy W. Brown

Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)